

Registration of an Enduring Power of Attorney

Introduction

An Enduring Power of Attorney (EPA) is a form of power of attorney whereby one person (the 'donor') appoints one or more persons ('the attorneys') to make decisions and which (unlike an ordinary power of attorney) continues to operate if the donor lacks capacity. However, in that situation, an EPA can only operate if it is registered.

An EPA was the predecessor to the Property and Financial Affairs Lasting Power of Attorney (LPA), which replaced it on the 1 October 2007. Whilst no new EPAs can be made, valid EPAs in existence before 1 October 2007 continue to be effective, and the attorney's duties continue as previously.

The law provides a safeguard against the abuse of an EPA by imposing a duty on the attorney to register the document with the Office of the Public Guardian (OPG) as soon as the attorney believes that the donor is, or is becoming, mentally incapable of managing his or her property and affairs.

If an attorney fails to apply for registration when he has reason to believe that the donor is, or is becoming, mentally incapable, he runs the risk that the donor has become mentally incapable and that his authority has been temporarily suspended. Once the attorney has applied to register the EPA, limited authority is restored to the attorney, thus enabling him to maintain the donor and to prevent loss to the donor's assets. Assuming that no successful objection to registration is made, the OPG will register the EPA, and the full authority of the attorney will then be restored.

This information sheet is intended to be a general guide to the details of the

registration procedure. There may be significant differences in practice according to the individual circumstances. In some cases there may be no relatives to whom the donor can give notice of intention to apply for registration; in other cases there may be numerous relatives who must be given notice.

Although this information sheet refers to "the attorney", there may, of course, be more than one attorney. If the donor has put more than one EPA in place, the registration obligation arises at the same time and the registration process, and fee, is applicable to each separately.

Outline of registration procedure

Briefly, the registration procedure is as follows:

- 1 the attorney must give the donor and, usually, various other people notice of intention to apply for registration. Prescribed form EP1PG is appropriate. Notice must be given to:
 - a the donor
 - b certain near relatives of the donor and
 - c any other attorney who is not being informed as a relative and who is not joining in the application.
- 2 A person is not entitled to receive notice if:
 - a his name or address is not known to the attorney and cannot reasonably be ascertained by him or
 - b the attorney has reason to believe that person has not attained the age of 18 years or is mentally incapable

Head Office
 Heathervale House
 2-4 Vale Avenue
 Tunbridge Wells
 Kent TN1 1DJ
 T 01892 510000
 F 01892 540170

Thames Gateway
 Corinthian House
 Galleon Boulevard
 Crossways Business Park
 Dartford
 Kent DA2 6QE
 T 01322 623700
 F 01322 623701

Registration of an Enduring Power of Attorney

Continued

- 3 The position with regard to relatives is that at least three relatives, if there are three that qualify, must be given notice. The relatives are placed in certain classes in an order of priority, and if the requirement to give notice to three relatives means that one in a class is notified, then all in that class must be given notice.

If you require further information, please discuss with your usual contact in the firm or Louise Mathias-Williams or Una Angus, on 01892 510000 or by email at:

l.mathias-williams@ts-p.co.uk

una.angus@ts-p.co.uk

Disclaimer

This information sheet is written as a general guide. As any course of action must depend on your individual circumstances, you are strongly recommended to obtain specific professional advice before you proceed. We do not accept any responsibility for action which may be taken as a result of having read this information sheet.

© Thomson Snell & Passmore LLP All Rights Reserved